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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Truth-in-Billing
and
Billing Format

)
)
) CC Docket No. 98-170
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)

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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I. INTRODUCTION

Pursuant to the Federal Communications Commission's ("Commission") Notice Of Proposed Rule Making ("Notice") in the above-referenced proceeding,¹/ Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the Commission's proposal to regulate telecommunications carriers' billing practices.

Of the more than eighty comments submitted in response to the Commission's Notice, the vast majority opposed billing mandates for all telecommunications carriers -- wireline or wireless. To the extent commenters addressed how the Commission's proposals might be implemented in the wireless industry (and many commenters did not), all opposed one-size-fits-all mandates.^{2/} Therefore, nothing in the record justifies the imposition of these rules on wireless

1/ Notice of Proposed Rule Making, FCC 98-232, released September 17, 1998.

2/ See, e.g., Omnipoint Communications, Inc. at p. 2; Cellular Telecommunications Industry Association ("CTIA") at p. 3; United States Cellular Corp. ("USCC") at p. 1.

carriers. The Commission should carefully consider the comments of the wireless industry, recognize its unique technical, billing and operational characteristics that present unique implementation challenges, and refrain from pursuing a one-size-fits-all approach to billing regulation.

II. DISCUSSION

A. CMRS Carriers' Billing Practices Should Not Be Regulated By The Commission

A number of commenters agreed with Nextel that none of the billing practices and abuses identified in the Notice are prevalent in the wireless industry.^{3/} In fact, as Nextel noted in its own comments, the Notice did not specifically address wireless providers when discussing any particular billing-related consumer issues.^{4/} As a number of commenters asserted, wireless services are distinctly different from wireline services, and should not be subject to the proposed regulations.^{5/} Primeco, Bell Atlantic Mobile Systems ("BAMS") and the CTIA, like Nextel, noted that there are fundamental differences in the wireless and wireline industries, including the fact that wireless services are deregulated and intensely competitive.^{6/} Automatically applying

^{3/} Comments of Nextel at p. 2; *see also* Comments of Ameritech at p. 6; Comments of Airtouch Communications, Inc. ("Airtouch") at pp. 6-7; BellSouth Corp. ("BellSouth") at p. 3; and Primeco Personal Communications, L.P. ("Primeco") at p. 5.

^{4/} *See, e.g.,* Comments of Bell Atlantic Mobile Systems ("BAMS") at p. 7.

^{5/} Comments of USCC at pp. 5-6; Airtouch at p. 2.

^{6/} *See* Comments of Primeco at p. 5; BAMS at pp. 7-8; CTIA at p. 5.

rules and regulations to wireless billing would be contrary to the Commission's deregulatory approach to wireless services.^{7/} Moreover, as Bellsouth noted, Congress has already recognized the differences in wireless and wireline providers by specifically excluding wireless carriers from last session's "slamming" bill.^{8/} Similarly, the Commission's analysis of the need for billing regulation should recognize these distinctions and exempt wireless carriers from its proposed billing mandates.

Given the competitive nature of the wireless industry and the fact that billing is a competitive tool which wireless carriers use to differentiate themselves, the Commission should not attempt to regulate billing methods and billing formats. Additionally, because this competition is relatively new, it would be premature to impose regulations before first ascertaining whether there is a problem that needs to be addressed. Mandating uniform, all-carrier regulations, without sufficient justification, would impose costly and burdensome rules on wireless carriers without any demonstrated countervailing public interest benefit.^{9/} As a result, the public interest would not be served by the Commission's proposals.

B. Nextel Supports the Comments of CTIA and Other Wireless Commenters

Nextel supports CTIA's assertion that the Commission should not seek to regulate the statements of carriers' customer service

^{7/} *Id.*

^{8/} Comments of Bellsouth at p. 11.

^{9/} Comments of Primeco at p. 6; *see also* Comments of Bellsouth at p. 11; Comments of BAMS at p. 2.

representatives.^{10/} The Commission should not hold carriers strictly liable for information about government mandates/taxes/fees that is passed on from their customer service representatives to customers. If the Commission is concerned about controlling the content of such communications, which it arguably has no authority to do,^{11/} it should permit carriers to provide inquiring customers with a government contact person and telephone number.

A significant issue that did not result in much focused comment by CMRS operators is the Commission's proposal on descriptions of charges resulting from federal regulatory actions. The Notice in particular expressed concern that carriers choosing to impose a customer surcharge to recover new mandatory charges on carriers for the federal universal service program may have "inaccurately identified" these assessments or implied that these charges "have been imposed directly on consumers by federal law."^{12/} The Notice also expressed concern that the "amount of these charges for a particular customer may not correspond to the actual costs to the carrier of universal service support and access charges attributable to that customer" and solicited comment on whether it would be reasonable for a carrier to bill as a surcharge

^{10/} Comments of CTIA at p. 12.

^{11/} See, e.g., Comments of USCC at p. 4. Indeed, it is not obvious what authority the Commission would use police fee-related conversations between carrier representatives and subscribers since the fees themselves telecommunications services.

^{12/} Notice, ¶25.

more than the amount actually incurred "attributable" to that customer. The Notice also asked whether it would be helpful to require carriers to explain their reasons for overrecovery of the costs it incurs.^{13/}

Nextel supports the notion that carriers that choose to assess a surcharge on customers to recoup the mandatory universal service contribution should not mislead or deceive customers as to the nature of the charge. The Commission must recognize, however, that any judgment as to the validity of a carrier's surcharge cannot be made in a vacuum. As the Commission is aware, the federal universal service program is a real cost of business to a carrier that includes not simply the assessment, but the cost of implementing and administering the program internally. If the Commission were to try to gauge the reasonableness of a carrier's surcharges, these costs would also be relevant. The Commission recognized already, as it must, that once carriers decide to assess their customers to recoup these mandatory charges, the charges placed on the bill are charges that the customer is required to pay, or service can be terminated.^{14/} Thus, any required

^{13/}*Id.* ¶ 31. The recent Joint Board Recommended Decision proceeds along this same path by suggesting that the Commission adopt rules to prevent carriers from assessing universal service line item assessments at a rate higher than the carrier's universal service assessment. See Federal-State Joint Board on Universal Service, *Second Recommended Decision*, CC Docket No. 96-45, FCC 98J-7, released November 25, 1998, ¶ 69. The Joint Board also suggested that the Commission require "truthful" explanations of the carrier's surcharge as well as adopt standard nomenclature. *Id.* ¶¶ 70, 72.

^{14/}See Federal-State Joint Board on Universal Service, *First Report and Order*, 12 FCC Rcd 8776, 9190, 9208-09 (1997).

communication to customers suggesting that these surcharges are avoidable are problematic. Further, any assumption that it would be a simple job to track "attributable" payments customer by customer is misconceived. First, the scope and size of the federal USF program and the relevant contribution factors change quarterly, which makes any carrier's planning and estimation process far more difficult.^{15/} The program itself is set up to report revenues in arrears, and as a result there is a significant time lag between the time the carrier's revenue is earned, then reported and when a customer is assessed.^{16/} Certainly in CMRS, the customer base on which surcharges are assessed is not stagnant. The type of matching the Notice suggests simply cannot be done.

Leaving aside the enormous practical problems of any review of the reasonableness of carrier USF assessments might present, there are significant legal hurdles to this approach. The Commission has forborne from rate regulation of CMRS carriers.^{17/} For the

^{15/}In adopting a Notice of Proposed Rulemaking to develop wireless-specific universal service policies, the Commission has in essence, acknowledged that these issues, as to CMRS carriers, are not cut and dried.

^{16/}In fact, the USF Worksheet recently changed to require carriers to pay an assessment on the amounts collected to pay for universal service. This "assessment on the assessment" also has an impact on the effective rate that a carrier charges to recoup its expenses. See Division Announces Release of Revised Universal Service Worksheet, FCC Form 457, *Public Notice*, CC Docket Nos. 97-21, 96-45, DA 98-1519, released July 31, 1998 (adding Line 48 where contributors are to report the revenues derived from charges assessed on end-users to recover contributions to state or federal universal service support mechanisms).

^{17/}A CMRS carrier remains fully subject to the Commission's complaint process, where its rates, after a hearing, can be found reasonable or unreasonable. See 47 C.F.R. §§ 1.711-735.

Commission to review the reasonableness of universal service surcharges, it would first have to repudiate its determination that CMRS carriers do not have market power. Just as fundamental, the Commission cannot judge the reasonableness of a carrier's rate without engaging in a Section 205 rate prescription proceeding. These complicating factors support reliance upon a case-by-case complaint approach to deal with situations where the Commission believes a CMRS carrier is misrepresenting to its customers its responsibilities for its mandatory participation in the universal service program.

III. CONCLUSION

Nothing raised in the comments supports the Commission's proposed imposition of billing rules and regulations on wireless carriers. The problems intended to be remedied by the Notice simply are not prevalent in the wireless industry. The Commission has not established that there are any wireless billing problems that need to be addressed with rules and regulations, and the wireless industry is growing increasingly competitive, thus eliminating the need for any such regulation. As a result, the

Commission should not impose its proposed billing rules and regulations on the wireless industry.

Respectfully submitted,

By  _____

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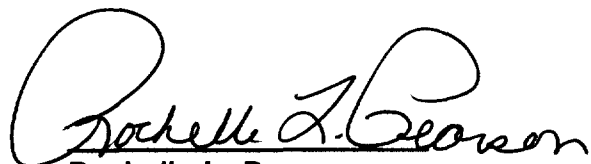
Date: December 16, 1998

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 16th day of December, 1998, caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served hand-delivery to the following:

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